



**Office of Mayor Kelli Linville
and
Bellingham City Council**

November 14, 2018
Via Electronic Filing

Chairman Ajit Pai
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

***RE: Opposition to FCC Cable Franchise Fee Deductions Proposed Rule
(MB Docket No. 05-311)***

Honorable Chairman Pai,

The City of Bellingham submits this comment to express its *strong opposition* to the second notice of proposed rulemaking (NPRM) which would re-define "franchise fee" to the detriment of local franchising authorities (LFAs).

Local franchising authorities, including the City of Bellingham, negotiate the unique terms of local franchise agreements with cable operators across the county. Cable operators routinely pay a franchise fee to an LFA for use of the right-of-way to deliver cable services within a local franchise area. The City of Bellingham has negotiated with two separate cable operators which provide services in the City's franchise area. The cable operators each pay to the City a "franchise fee" which is used to support both PEG services and general government services (e.g., street maintenance, fire, police, parks).

The City of Bellingham's PEG channel, BTV Bellingham, is a recognized resource for public, education, and government information in our community. BTV Bellingham is cablecast throughout Whatcom County, reaches an estimated 30,000 cable subscribers, and is the only PEG station in our city and county. BTV Bellingham programming includes televised coverage of City of Bellingham and Whatcom County meetings. BTV Bellingham also provides coverage of local events, educational programming including university lectures and interview programs, and six (6) hours per week of public access community programming. The proposed rules would substantially reduce our negotiated revenues from franchise fees and critically impact the operating budget for BTV Bellingham. If adopted, the proposal could lead to the elimination of the City's PEG channel, which result is the exact opposite of the intent of the United States Congress when it adopted the Cable Act in 1984.

We have the following objections to the proposed rules:

1. The Commission's proposed re-definition of "franchise fee" has no support in the plain language of the Cable Act of 1984;
2. The Commission's proposal finds no support in the legislative history of the Cable Act;
3. The Commission's proposal finds no support in related provisions of the Cable Act;
4. The proposal would significantly reduce the franchise fee revenues which were negotiated between the City and the cable operators in exchange for the operator's use of the public right-

of-way to support PEG programming and general governmental services. Revenue reductions would jeopardize the sole source of local programming and information provided by BTV Bellingham and would put local government service levels at risk;

5. The proposal would unconstitutionally impair the existing franchise agreements between the City and two (2) cable operators which were negotiated based on community assessment and needs;
6. The proposal would interfere with the authority of local franchising authorities, such as the City of Bellingham, to enact laws for the general health, safety, and welfare of their communities;
7. The proposal is unconstitutionally vague. Because the notice fails to define the term "cable-related in-kind contributions," it is impossible to accurately determine the potential impacts of this proposal. We reviewed our franchise agreements based on the proposed definition and could not determine the impacts. Any rule change provided needs a much clearer definition.;
8. The proposal does not specifically state whether it is prospective *only* or retroactive. Applying this definition retroactively would create a severe financial hardship for local franchising authorities that have negotiated these fees with cable operators for decades. The City would recommend that *years* of advance notice be provided prior to implementation of new franchise fee definitions; and
9. The proposal would allow cable operators to determine the fair market value (FMV) of in-kind services rather than use a cost basis. Should any of the rules be adopted, the City suggests that a cost basis is fairer and more easily auditable.

The City of Bellingham values PEG programming, and the City has relied for decades on the statutory definition of "franchise fees" when negotiating with cable operators for franchise fees and in-kind services that cable operators would pay the City in exchange for the use of the right-of-way to provide cable services. The Commission's proposed re-definition of "franchise fee" would have a severe negative impact of the City of Bellingham as explained above. The City is strongly opposed to the proposal because it would significantly reduce the franchise fees that were negotiated between the City and cable operators.

The City of Bellingham respectfully requests that the FCC reject the proposed rules entirely.

Respectfully submitted,



Kelli Linville, Mayor



Dan Hammill, Bellingham Council President

Cc: Bellingham City Council
Senator Patty Murray
Senator Maria Cantwell
Representative Susan DelBene
Representative Rick Larsen